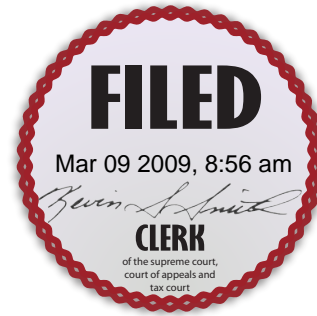


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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION)
OF THE PARENT-CHILD RELATIONSHIP)
OF J.C. and D.H., minor children, and)
Nettie J., their mother,)

NETTIE J.,)

Appellant-Respondent,)

vs.)

INDIANA DEPARTMENT OF)
CHILD SERVICES,)

Appellee-Petitioner.)

No. 18A02-0808-JV-727

APPEAL FROM THE DELAWARE CIRCUIT COURT

The Honorable Richard A. Dailey, Judge

The Honorable Brian Pierce, Master Commissioner

Cause No. 18C01-0803-JT-24

Cause No. 18C02-0803-JT-25

March 9, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent Nettie J., (“Mother”), appeals the trial court’s judgment terminating her parental rights with regard to her two children, J.C. and D.H. Specifically, Mother argues that the Indiana Department of Child Services (DCS) failed to establish the elements of Indiana Code section 31-35-2-4(b)(2) by clear and convincing evidence as required to terminate her parental rights. Finding no error, we affirm the judgment of the trial court.

FACTS

Mother is the biological mother of J.C., born on October 16, 1991, and D.H., born on June 27, 1997. On March 21, 2006, the DCS initiated a Child in Need of Services (CHINS) petition against Mother, alleging that J.C. and D.H. were being exposed to domestic violence, that Mother did not remove the children from the violent home, that Mother suffered from depression, and that both children were suffering from psychological trauma at the time of removal. The children were determined to be CHINS on August 14, 2006, and Mother was ordered to participate in certain services to reunify her with her children.

On March 12, 2008, the DCS filed two separate petitions for the Involuntary Termination of the Parent-Child Relationship. On June 23, 2008, the trial court conducted a fact-finding hearing, in which both cases were consolidated. At the hearing, the DCS presented evidence regarding Mother’s lack of cooperation, lack of progress with regard to reunification efforts, and the negative impact of her failures on the children’s lives. Specifically, Dr. Paul Spengler, a psychologist who evaluated Mother on May 20, 2008,

testified that Mother's evaluation indicated that she was impulsive, that she has the tendency to make poor judgments, that she would likely abuse substances, and that she would have difficulty completing the substance abuse programs. In addition, Dr. Spengler stated that Mother's prognosis for change was poor.

Al Adams, an addictions counselor at Meridian Services, testified that in the fall of 2006, Mother completed an intensive outpatient program (IOP), but did not complete aftercare. Mother returned for treatment in May 2007, but discontinued treatment in June 2007, when she was confronted with a positive drug screen. In July 2007, Mother returned for treatment again, but did not complete the program. Mother completed an IOP in January 2008, and was in aftercare, but stopped attending in February after she failed another drug test.

D.H.'s counselor, Agila Rangarajan, testified that Mother did not show any insight into how her behaviors had a negative impact on D.H. Specifically, when she was confronted with the negative effect that domestic violence had on D.H., Mother became very upset and left before the session was completed. In addition, Rangarajan testified that Mother told her that she did not believe that her past behaviors had any effect on D.H. and that the telephone calls she received regarding D.H.'s self-destructing behavior "[were] overwhelming to her." Tr. p. 74.

Lynel Stites, another counselor for D.H., testified that Mother attended five consecutive counseling sessions and then stopped attending. On March 24, 2008, after making four attempts to make contact with Mother, she left Mother a message to call her

when Mother was ready to come in for family counseling. As of the June 23, 2008, fact-finding hearing, Stites had not been contacted by Mother.

Linda Silva, J.C.'s therapist, testified that J.C. suffered from anxiety and low self-esteem, which was triggered by Mother's repeated failures to attend scheduled visits. In addition, Silva stated that J.C. takes on the parenting role and feels responsible for her family's situation. Moreover, J.C. is conflicted because she wants a relationship with her mother, but she has a much better life without her.

Barbara Hisel, who supervised visits between J.C. and Mother, testified that Mother would frequently miss scheduled visits, that she left early when she did show up for a visit, and that Mother did not seem to understand J.C.'s anger towards her behavior.

Becky Brandon, a family development specialist with Open Door Community Services, testified that she helped Mother with visitation, budgeting, transportation, parenting, and obtaining community resources. Brandon testified that Mother failed to complete the necessary steps for reunification and that Mother used her children's social security checks to purchase drugs and alcohol. In addition, the visits that Brandon supervised were not very positive because Mother was overly critical, demanding, and harsh with her children. Services were eventually terminated because Mother stopped participating in drug treatment and continued to use her children's social security checks to purchase drugs and alcohol.

Mary Johnson, the family case manager assigned to Mother and her children, testified that Mother tested positive for cocaine six days before the fact-finding hearing. Moreover,

out of the fifty-two drug screens requested of Mother, thirty-two indicated drug usage, were refused, or the sample was diluted. According to Johnson, services were terminated because of Mother's lack of cooperation. In Johnson's opinion, it was in the children's best interest for Mother's parental rights to be terminated.

The children's Court Appointed Special Advocate (CASA), Toni Annis, testified that she believed that terminating Mother's parental rights was in the best interest of the children because of Mother's habitual drug use, emotionally damaging behavior, and pattern of instability.

On July 21, 2008, the trial court entered findings of fact and conclusions of law in its order terminating Mother's parental rights to both children. Mother now appeals.

DISCUSSION AND DECISION

Mother argues that the DCS failed to establish the necessary requirements to terminate her parental rights. Specifically, Mother argues that the DCS failed to prove by clear and convincing evidence that the conditions that resulted in the children's removal would not be remedied, that the continuation of parent-child relationship poses a threat to the well-being of the children, or that termination was in the best interests of the children.

The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to raise their children. But parental rights are not absolute and must be subordinated to the child's interests in determining the proper disposition of a petition to terminate parental rights. In re D.D., 804 N.E.2d 258, 264-65 (Ind. Ct. App. 2004). Thus, parental rights may be terminated when the parents are unable or unwilling to meet their

parental responsibilities. Id. at 265.

When reviewing the termination of parental rights, we neither reweigh the evidence nor judge witness credibility, considering instead only the evidence and reasonable inferences that are most favorable to the judgment. In re A.H., 832 N.E.2d 563, 570 (Ind. Ct. App. 2005). Here, the trial court made specific findings and conclusions thereon in its order terminating Mother's parental rights. Where the trial court enters specific findings and conclusions thereon, we apply a two-tiered standard of review. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings, and then we determine whether the findings support the judgment. Id. We will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). A judgment is clearly erroneous when the evidence does not support the findings or the findings do not support the result. In re S.F., 883 N.E.2d 830, 834 (Ind. Ct. App. 2008).

To effect the involuntary termination of a parent-child relationship, the State must present clear and convincing evidence establishing the following elements:

(A) one (1) of the following exists:

(i) the child has been removed from the parent for at least six (6) months under a dispositional decree;

(ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or

(iii) the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen

(15) months of the most recent twenty-two (22) months:

(B) there is a reasonable probability that:

(i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or

(ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2).

Mother argues that the trial court erred when it determined that the conditions that led to the removal of the children would not be remedied. When determining whether the conditions will be remedied, the trial court must judge the parent's fitness to care for the children at the time of the termination hearing, taking into consideration evidence of changed conditions. In re D.J., 755 N.E.2d 679, 684 (Ind. Ct. App. 2001). However, a parent's habitual patterns of conduct must also be evaluated to determine the probability of future negative behavior. Id.

As stated above, Mother has exhibited a habitual pattern of drug abuse and neglect of her children. Mother has failed to fully complete several drug treatment programs because she refused to attend whenever she was confronted with a positive drug screen. Tr. p. 53-57. Even more compelling, Mother tested positive for cocaine only six days before the fact-finding hearing. Id. at 126. In addition, Mother failed to attend counseling sessions with D.H. and stated that telephone calls reporting D.H.'s self-destructing behavior caused her

“extra stress.” Id. at 72-74. Furthermore, Mother’s failure to attend scheduled visitations has left J.C. with low self-esteem and anxiety. Id. at 92-93. Finally, services provided by Open Door Community Services were terminated because of Mother’s lack of cooperation and her continued use of her children’s social security checks to purchase alcohol and drugs. Id. at 108-09. In light of this evidence, we cannot say that the trial court’s conclusion that the conditions would not be remedied was clearly erroneous.

Mother also argues that that there was insufficient evidence to show that she was a threat to her children’s well-being. Indiana Code section 31-35-2-4(b)(2)(B) requires that the State show either that there exists a reasonable probability that conditions will not be remedied or reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child. As discussed above, the trial court had sufficient evidence to conclude that there was a reasonable probability that conditions would not be remedied. Thus, DCS did not have to prove that the continuation of the parent-child relationship posed a threat to the well-being of the children. Nevertheless, the trial court concluded that the continuation of the parent-child relationship would pose a threat to the well-being of both children. Appellant’s App. p. 43. Given the evidence previously discussed, we cannot say that this determination was clearly erroneous.

Finally, Mother argues that the DCS failed to prove that terminating her parental rights was in the best interests of the children. When determining whether termination of parental rights is in the best interest of the child, the trial court need not wait until a child is irreversibly harmed such that his or her physical, mental, and social development are

permanently impaired before terminating the parent-child relationship. In re D.J., 755 N.E. 2d at 684.

As previously discussed, Silva, J.C.'s therapist, testified that J.C. suffered from anxiety and low self-esteem as a result of mother not attending scheduled visits. Tr. p. 92-93. In addition, Silva stated that J.C. feels conflicted because she wants a relationship with her mother, but she has a much better life without her. Similarly, D.H.'s counselor, testified that Mother told her that she did not believe that her past behaviors had any effect on D.H. and that it overwhelmed her when she received telephone calls regarding D.H.'s self-harming behaviors. Id. at 74.

Furthermore, the family development specialist testified that the visits she supervised were not positive because Mother was overly critical, demanding, and harsh towards the children. Id. at 107-08. Johnson, the DCS case manager, stated that Mother had failed to either complete a drug treatment program or to take the necessary steps to get back into a drug treatment program. Id. at 129-30. Moreover, Johnson testified that Mother was dismissed from services because of her lack of cooperation and her failure to complete family counseling. Finally, the CASA testified that terminating Mother's parental rights was in the best interest of the children because of her habitual drug use, emotionally damaging behavior, and the children's exposure to a pattern of instability. Id. at 162-63.

In sum, the testimony of the J.C.'s therapist and D.H.'s counselor, coupled with the evidence of Mother's extensive drug use, her failure to complete treatment, and testimony from the CASA was sufficient to support a finding that termination of parental rights was in

the children's best interest. See In re A.J., 881 N.E. 2d 706, 718-19 (Ind. Ct. App. 2008) (holding that the recommendations of the children's caseworker and guardian ad litem coupled with evidence of the mother's extensive drug history, her incompleteness of court-ordered services, and testimony that the children were happy and doing well in their foster homes were sufficient for the trial court to determine that termination of parental rights was in the children's best interest).

The above analysis notwithstanding, Mother maintains that the DCS failed to make reasonable efforts at reunification because it did not offer Mother in-patient substance abuse treatment. The DCS is required to make "reasonable efforts to preserve and reunify families." Ind. Code § 31-34-21-5.5(b). However, "[i]f the parent feels the services ordered by the court are inadequate to facilitate the change required for reunification, then the onus is on the parent to request additional assistance from the court or DCS." Prince v. Dep't. of Child Servs., 861 N.E.2d 1223, 1231 (Ind. Ct. App. 2007).

Here, in its CHINS dispositional order, the trial court ordered Mother to complete a substance abuse program through Meridian Services, ex. p. 10, but Mother failed to successfully complete the program four times. In addition, the trial court ordered Mother to participate in family counseling, id., which she did not complete because of her lack of cooperation. Furthermore, the trial court ordered Mother to have visitation with her children under the supervision of the DCS, but it was unsuccessful because of Mother's harshness towards the children and her failure to attend scheduled visitations.

In light of these circumstances, we cannot conclude that the DCS failed to make

reasonable efforts at reunification. Moreover, Mother failed to make any requests for additional services prior to the termination hearing. Therefore, we conclude that the trial court properly terminated Mother's parental rights with respect J.S. and D.H.

The judgment of the trial court is affirmed.

NAJAM, J., and KIRSCH, J., concur.